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10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12

13 KIA DAVIDSON, individually, and
14 on behalf of other members of the
general public similarly situated,

15 Plaintiff,

16 vs.

17 O'REILLY AUTO ENTERPRISES,
18 LLC, a Delaware corporation,;

19 Defendant.
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Case No.: 5:17-cv-00603

**STIPULATED PROTECTIVE
ORDER**

1 A. PURPOSES AND LIMITATIONS

2 Disclosure and discovery in this action is likely to involve production of
3 confidential, proprietary or private information for which special protection from
4 public disclosure and from use for any purpose other than prosecuting this
5 litigation may be warranted. Accordingly, the parties to this case, KIA
6 DAVIDSON and O'REILLY AUTO ENTERPRISES, LLC (the "Parties"),
7 hereby stipulate to and petition the Court to enter the following Stipulated
8 Protective Order. The parties acknowledge that this Order does not confer blanket
9 protections on all disclosures, documents, or responses to discovery and that the
10 protection it affords from public disclosure and use extends only to the limited
11 information or items that are entitled to confidential treatment under the applicable
12 legal principles.

13 B. GOOD CAUSE STATEMENT

14 This action is likely to involve trade secrets and other valuable research,
15 development, commercial, financial, technical and/or proprietary information for
16 which special protection from public disclosure and from use for any purpose
17 other than prosecution of this action is warranted. Such confidential and
18 proprietary materials and information consist of, among other things, confidential
19 business or financial information, information regarding confidential business
20 practices, or other confidential research, development, or commercial information
21 (including information implicating privacy rights of third parties), information
22 otherwise generally unavailable to the public, or which may be privileged or
23 otherwise protected from disclosure under state or federal statutes, court rules,
24 case decisions, or common law. Accordingly, to expedite the flow of information,
25 to facilitate the prompt resolution of disputes over confidentiality of discovery
26 materials, to adequately protect information the parties are entitled to keep
27 confidential, to ensure that the parties are permitted reasonable necessary uses of
28 such material in preparation for and in the conduct of trial, to address their

1 handling at the end of the litigation, and serve the ends of justice, a protective
2 order for such information is justified in this matter. It is the intent of the parties
3 that information will not be designated as confidential for tactical reasons and that
4 nothing be so designated without a good faith belief that it has been maintained in
5 a confidential, non-public manner, and there is good cause why it should not be
6 part of the public record of this case.

7 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER
8 SEAL

9 The parties further acknowledge, as set forth in Section 12.3, below, that
10 this Stipulated Protective Order does not entitle them to file confidential
11 information under seal; Local Civil Rule 79-5 sets forth the procedures that must
12 be followed and the standards that will be applied when a party seeks permission
13 from the court to file material under seal.

14 There is a strong presumption that the public has a right of access to judicial
15 proceedings and records in civil cases. In connection with non-dispositive
16 motions, good cause must be shown to support a filing under seal. *See Kamakana*
17 *v. City and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v.*
18 *Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v.*
19 *Sony Electronics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated
20 protective orders require good cause showing), and a specific showing of good
21 cause or compelling reasons with proper evidentiary support and legal
22 justification, must be made with respect to Protected Material that a party seeks to
23 file under seal. The parties' mere designation of Disclosure or Discovery Material
24 as "CONFIDENTIAL" does not—without the submission of competent evidence
25 by declaration, establishing that the material sought to be filed under seal qualifies
26 as confidential, privileged, or otherwise protectable—constitute good cause.
27 Further, if a party requests sealing related to a dispositive motion or trial, then
28 compelling reasons, not only good cause, for the sealing must be shown, and the

1 relief sought shall be narrowly tailored to serve the specific interest to be
2 protected. *See Pintos v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir.
3 2010). For each item or type of information, document, or thing sought to be filed
4 or introduced under seal in connection with a dispositive motion or trial, the party
5 seeking protection must articulate compelling reasons, supported by specific facts
6 and legal justification, for the requested sealing order. Again, competent evidence
7 supporting the application to file documents under seal must be provided by
8 declaration.

9 Any document that is not confidential, privileged, or otherwise protectable
10 in its entirety will not be filed under seal if the confidential portions can be
11 redacted. If documents can be redacted, then a redacted version for public
12 viewing, omitting only the confidential, privileged, or otherwise protectable
13 portions of the document, shall be filed. Any application that seeks to file
14 documents under seal in their entirety should include an explanation of why
15 redaction is not feasible.

16 1. DEFINITIONS

17 1.1 Action: *Davidson v. O'Reilly Auto Enterprises, LLC*, United States
18 District Court for the Central District of California Case No. 5:17-cv-00603-RGK-
19 AJW

20 1.2 Challenging Party: a Party or Non-Party that challenges the designation
21 of information or items under this Order.

22 1.3 "CONFIDENTIAL" Information or Items: information (regardless of
23 how it is generated, stored or maintained) or tangible things that qualify for
24 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
25 the Good Cause Statement.

26 Such information shall include, but not necessarily be limited to:

27 (a) Any and all documents referring or related to confidential and
28 proprietary human resources or business information; financial records of the

1 parties; compensation of Defendant's current or former personnel; policies,
2 procedures or training materials of Defendant; or Defendant's organizational
3 structure;

4 (b) Any documents from the personnel, medical or workers'
5 compensation file of any current or former employee or contractor;

6 (c) Any documents relating to the medical or health information of
7 any of Defendant's current or former employees or contractors;

8 (d) Any portions of depositions (audio or video) where Confidential
9 Information is disclosed or used as exhibits.

10 1.4 Counsel: Counsel for Plaintiff, Outside Counsel of Record for
11 Defendant, and In-House Counsel for Defendant (as well as their support staff).

12 1.5 Designating Party: a Party or Non-Party that designates information or items
13 that it produces in disclosures or in responses to discovery as
14 "CONFIDENTIAL".

15 1.6 Disclosure or Discovery Material: all items or information, regardless of
16 the medium or manner in which it is generated, stored, or maintained (including,
17 among other things, testimony, transcripts, and tangible things), that are produced
18 or generated in disclosures or responses to discovery in this matter.

19 1.7 Expert: a person with specialized knowledge or experience in a matter
20 pertinent to the litigation who has been retained by a Party or its counsel to serve
21 as an expert witness or as a consultant in this Action.

22 1.8 In-House Counsel: attorneys who are employees of a party to this
23 Action. In-House Counsel does not include Outside Counsel of Record or any
24 other outside counsel.

25 1.9 Non-Party: any natural person, partnership, corporation, association or
26 other legal entity not named as a Party to this action.

27 1.10 Outside Counsel of Record: attorneys who are not employees of a
28 party to this Action but are retained to represent or advise a party to this Action

1 and have appeared in this Action on behalf of that party or are affiliated with a law
2 firm that has appeared on behalf of that party, and includes support staff.

3 1.11 Party: any party to this Action, including all of its officers, directors,
4 employees, consultants, retained experts, and Outside Counsel of Record (and
5 their support staffs).

6 1.12 Producing Party: a Party or Non-Party that produces Disclosure or
7 Discovery Material in this Action.

8 1.13 Professional Vendors: persons or entities that provide litigation support
9 services (e.g., photocopying, videotaping, translating, preparing exhibits or
10 demonstrations, and organizing, storing, or retrieving data in any form or medium)
11 and their employees and subcontractors.

12 1.14 Protected Material: any Disclosure or Discovery Material that is
13 designated as "CONFIDENTIAL".

14 1.15 Receiving Party: a Party that receives Disclosure or Discovery
15 Material from a Producing Party.

16 2. SCOPE

17 The protections conferred by this Stipulation and Order cover not only
18 Protected Material (as defined above), but also (1) any information copied or
19 extracted from Protected Material; (2) all copies, excerpts, summaries, or
20 compilations of Protected Material; and (3) any testimony, conversations, or
21 presentations by Parties or their Counsel that might reveal Protected Material.
22 Any use of Protected Material at trial shall be governed by the orders of the trial
23 judge. This Order does not govern the use of Protected Material at trial.

24 3. DURATION

25 Even after final disposition of this litigation, the confidentiality obligations
26 imposed by this Order shall remain in effect until a Designating Party agrees
27 otherwise in writing or a court order otherwise directs. Final disposition shall be
28 deemed to be the later of (1) dismissal of all claims and defenses in this action,

1 with or without prejudice; or (2) final judgment herein after the completion and
2 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
3 including the time limits for filing any motions or applications for extension of
4 time pursuant to applicable law.

5 4. DESIGNATING PROTECTED MATERIAL

6 4.1 Exercise of Restraint and Care in Designating Material for Protection.

7 Each Party or Non-Party that designates information or items for protection under
8 this Order must take care to limit any such designation to specific material that
9 qualifies under the appropriate standards. The Designating Party must designate
10 for protection only those parts of material, documents, items or oral or written
11 communications that qualify so that other portions of the material, documents,
12 items or communications for which protection is not warranted are not swept
13 unjustifiably within the ambit of this Order.

14 Mass, indiscriminate or routinized designations are prohibited. Designations
15 that are shown to be clearly unjustified or that have been made for an improper
16 purpose (e.g., to unnecessarily encumber the case development process or to
17 impose unnecessary expenses and burdens on other parties) may expose the
18 Designating Party to sanctions.

19 If it comes to a Designating Party's attention that information or items that
20 it designated for protection do not qualify for protection, that Designating Party
21 must promptly notify all other Parties that it is withdrawing the inapplicable
22 designation.

23 4.2 Manner and Timing of Designations. Except as otherwise provided in
24 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
25 stipulated or ordered, Disclosure or Discovery Material that qualifies for
26 protection under this Order must be clearly so designated before the material is
27 disclosed or produced. Designation in conformity with this Order requires:
28

1 (a) for information in documentary form (e.g., paper or electronic
2 documents, but excluding transcripts of depositions or other pretrial or trial
3 proceedings), that the Producing Party affix at a minimum, the legend
4 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
5 contains protected material. If only a portion of the material on a page qualifies for
6 protection, the Producing Party also must clearly identify the protected portion(s)
7 (e.g., by making appropriate markings in the margins).

8 A Party or Non-Party that makes original documents available for
9 inspection need not designate them for protection until after the inspecting Party
10 has indicated which documents it would like copied and produced. During the
11 inspection and before the designation, all of the material made available for
12 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
13 identified the documents it wants copied and produced, the Producing Party must
14 determine which documents, or portions thereof, it believes qualify for protection
15 under this Order. Then, before producing the specified documents, the Producing
16 Party must affix the "CONFIDENTIAL" legend to each page that contains
17 Protected Material. If only a portion of the material on a page qualifies for
18 protection, the Producing Party also must clearly identify the protected portion(s)
19 (e.g., by making appropriate markings in the margins).

20 (b) for testimony given in depositions that the Designating Party identifies
21 the Disclosure or Discovery Material on the record, before the close of the
22 deposition all protected testimony.

23 (c) for information produced in some form other than documentary and for
24 any other tangible items, that the Producing Party affix in a prominent place on the
25 exterior of the container or containers in which the information is stored the
26 legend "CONFIDENTIAL." If only a portion or portions of the information
27 warrants protection, the Producing Party, to the extent practicable, shall identify
28 the protected portion(s).

1 4.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
2 failure to designate qualified information or items does not, standing alone, waive
3 the Designating Party's right to secure protection under this Order for such
4 material. Upon timely correction of a designation, the Receiving Party must make
5 reasonable efforts to assure that the material is treated in accordance with the
6 provisions of this Order.

7 5. CHALLENGING CONFIDENTIALITY DESIGNATIONS

8 5.1 Timing of Challenges. Any Party or Non-Party may challenge a
9 designation of confidentiality at any time that is consistent with the Court's
10 Scheduling Order.

11 5.2 Meet and Confer. The Challenging Party shall initiate the dispute
12 resolution process in full accordance with Local Rule 37-1 by providing written
13 notice of each designation it is challenging and describing the basis for each
14 challenge. To avoid ambiguity as to whether a challenge has been made, the
15 written notice must recite that the challenge to confidentiality is being made in
16 accordance with this specific paragraph of the Protective Order. The parties shall
17 attempt to resolve each challenge in good faith and must begin the process by
18 conferring directly (in voice-to-voice dialogue; other forms of communication are
19 not sufficient) within 14 days of the date of service of notice. In conferring, the
20 Challenging Party must explain the basis for its belief that the designation was not
21 proper and must give the Designating Party an opportunity to review the
22 designated material, to reconsider the circumstances, and, if no change in
23 designation is offered, to explain the basis for the chosen designation. A
24 Challenging Party may proceed to the next stage of the challenge process only if it
25 has engaged in this meet and confer process first or establishes that the
26 Designating Party is unwilling to participate in the meet and confer process in a
27 timely manner.

1 5.3 Joint Stipulation. If the Parties cannot resolve a challenge without court
2 intervention, the Challenging Party shall file and serve a motion to remove
3 confidentiality designation in compliance with Local Rule 37-2 (including the
4 Joint Stipulation Requirement) within 28 days of the initial notice of challenge or
5 within 14 days of the parties agreeing that the meet and confer process will not
6 resolve their dispute, whichever is earlier. Each such motion must be accompanied
7 by a competent declaration affirming that the movant has complied with the meet
8 and confer requirements imposed in the preceding paragraph and Local Rule 37-1.
9 Failure by the Challenging Party to make such a motion including the required
10 declaration within 28 days (or 14 days, if applicable) shall automatically waive the
11 confidentiality objection for each challenged designation. In addition, the
12 Designating Party may file a motion to retain a confidentiality designation at any
13 time if there is good cause for doing so, including a challenge to the designation of
14 a deposition transcript or any portions thereof. Any motion brought pursuant to
15 this provision must be accompanied by a competent declaration affirming that the
16 movant has complied with the meet and confer requirements imposed by the
17 preceding paragraph.

18
19 5.4 The burden of persuasion in any such challenge proceeding shall be on
20 the Designating Party. Frivolous challenges, and those made for an improper
21 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
22 parties) may expose the Challenging Party to sanctions. Unless the Designating
23 Party has waived or withdrawn the confidentiality designation, all parties shall
24 continue to afford the material in question the level of protection to which it is
25 entitled under the Producing Party's designation until the Court rules on the
26 challenge.

27 6. ACCESS TO AND USE OF PROTECTED MATERIAL
28

1 6.1 Basic Principles. A Receiving Party may use Protected Material that is
2 disclosed or produced by another Party or by a Non-Party in connection with this
3 Action only for prosecuting, defending or attempting to settle this Action. This
4 Stipulated Protective Order is expressly intended to comply with Rule 1-500(A) of
5 the California Rules of Professional Conduct. Such Protected Material may be
6 disclosed only to the categories of persons and under the conditions described in
7 this Order. When the Action has been terminated, a Receiving Party must comply
8 with the provisions of section 12 below (FINAL DISPOSITION).

9 Protected Material must be stored and maintained by a Receiving Party at a
10 location and in a secure manner that ensures that access is limited to the persons
11 authorized under this Order.

12 6.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
13 otherwise ordered by the court or permitted in writing by the Designating Party, a
14 Receiving Party may disclose any information or item designated
15 "CONFIDENTIAL" only to:

16 (a) the Receiving Party's Outside Counsel of Record in this Action, as well
17 as employees of said Outside Counsel of Record to whom it is reasonably
18 necessary to disclose the information for this Action;

19 (b) the officers, directors, and employees (including In-House Counsel) of
20 the Receiving Party to whom disclosure is reasonably necessary for this Action;

21 (c) Experts (as defined in this Order) of the Receiving Party to whom
22 disclosure is reasonably necessary for this Action and who have signed the
23 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

24 (d) the court and its personnel;

25 (e) court reporters and their staff;

26 (f) professional jury or trial consultants, mock jurors, and Professional
27 Vendors (as defined in this Order) to whom disclosure is reasonably necessary for
28

1 this Action and who have signed the "Acknowledgment and Agreement to Be
2 Bound" (Exhibit A);

3 (g) the author or recipient of a document containing the information or a
4 custodian or other person who otherwise possessed or knew the information;

5 (h) during their depositions, witnesses, and attorneys for witnesses, in the
6 Action to whom disclosure is reasonably necessary provided: (1) the deposing
7 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)
8 they will not be permitted to keep any confidential information unless they sign
9 the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise
10 agreed by the Designating Party or ordered by the court. Pages of transcribed
11 deposition testimony or exhibits to depositions that reveal Protected Material may
12 be separately bound by the court reporter and may not be disclosed to anyone
13 except as permitted under this Stipulated Protective Order; and

14 (i) any mediator or settlement officer, and their supporting personnel,
15 mutually agreed upon by any of the parties engaged in settlement discussions.

16 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
17 IN OTHER LITIGATION

18 If a Party is served with a subpoena or a court order issued in other
19 litigation that compels disclosure of any information or items designated in this
20 Action as "CONFIDENTIAL," that Party must:

21 (a) promptly notify in writing the Designating Party. Such notification shall
22 include a copy of the subpoena or court order;

23 (b) promptly notify in writing the party who caused the subpoena or order to
24 issue in the other litigation that some or all of the material covered by the
25 subpoena or order is subject to this Protective Order. Such notification shall
26 include a copy of this Stipulated Protective Order; and

27 (c) cooperate with respect to all reasonable procedures sought to be pursued
28 by the Designating Party whose Protected Material may be affected.

1 If the Designating Party timely seeks a protective order, the Party served
2 with the subpoena or court order shall not produce any information designated in
3 this action as "CONFIDENTIAL" before a determination by the court from which
4 the subpoena or order issued, unless the Party has obtained the Designating
5 Party's permission. The Designating Party shall bear the burden and expense of
6 seeking protection in that court of its confidential material and nothing in these
7 provisions should be construed as authorizing or encouraging a Receiving Party in
8 this Action to disobey a lawful directive from another court.

9 8. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
10 PRODUCED IN THIS LITIGATION

11 (a) The terms of this Order are applicable to information produced by a
12 Non-Party in this Action and designated as "CONFIDENTIAL." Such information
13 produced by Non-Parties in connection with this litigation is protected by the
14 remedies and relief provided by this Order. Nothing in these provisions should be
15 construed as prohibiting a Non-Party from seeking additional protections.

16 (b) In the event that a Party is required, by a valid discovery request, to
17 produce a Non-Party's confidential information in its possession, and the Party is
18 subject to an agreement with the Non-Party not to produce the Non-Party's
19 confidential information, then the Party shall:

20 (1) promptly notify in writing the Requesting Party and the Non-Party that
21 some or all of the information requested is subject to a confidentiality agreement
22 with a Non-Party;

23 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
24 Order in this Action, the relevant discovery request(s), and a reasonably specific
25 description of the information requested; and

26 (3) make the information requested available for inspection by the Non-
27 Party, if requested.
28

1 (c) If the Non-Party fails to seek a protective order from this court within 14
2 days of receiving the notice and accompanying information, the Receiving Party
3 may produce the Non-Party's confidential information responsive to the discovery
4 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
5 not produce any information in its possession or control that is subject to the
6 confidentiality agreement with the Non-Party before a determination by the court.

7 Absent a court order to the contrary, the Non-Party shall bear the burden
8 and expense of seeking protection in this court of its Protected Material.

9 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

10 If a Receiving Party learns that, by inadvertence or otherwise, it has
11 disclosed Protected Material to any person or in any circumstance not authorized
12 under this Stipulated Protective Order, the Receiving Party must immediately (a)
13 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
14 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
15 the person or persons to whom unauthorized disclosures were made of all the
16 terms of this Order, and (d) request such person or persons to execute the
17 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
18 A.

19 10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
20 PROTECTED MATERIAL

21 Pursuant to FRE 502 (d) and (e), the parties agree to, and the Court orders
22 protection of privileged and otherwise Protected Material against claims of waiver
23 (including as against third parties and in other federal and state proceedings) as
24 follows:

25 (a) The disclosure or production of documents by a Producing Party
26 subject to a legally recognized claim of privilege, including without limitation the
27 attorney-client privilege and the work-product doctrine, to a Receiving Party, shall
28 in no way constitute the voluntary disclosure of such Document, provided that the

1 requirements of Fed. R. Evid. 502(b)(1)-(3) are met;

2 (b) The inadvertent disclosure or production of any document in this
3 action shall not result in the waiver of any privilege, evidentiary protection or
4 other protection associated with such document as to the Receiving Party or any
5 third parties, and shall not result in any waiver, including subject matter waiver, of
6 any kind, provided that the requirements of Fed. R. Evid. 502(b)(1)-(3) are met;

7 (c) If, during the course of this litigation, a party determines that any
8 document produced by another party is or may reasonably be subject to a legally
9 recognizable privilege or evidentiary protection ("Protected Document"):

10 (i) the Receiving Party shall: (A) refrain from reading the
11 Protected Document any more closely than is necessary to ascertain that it is
12 privileged or otherwise protected from disclosure; (B) immediately notify the
13 Producing Party in writing that it has discovered documents believed to be
14 privileged or protected; (C) specifically identify the Protected Documents by bates
15 number range or hash value, and, (D) within ten (10) days of discovery by the
16 Receiving Party, return, sequester, or destroy all copies of such Protected
17 Documents, along with any notes, abstracts or compilations of the content
18 thereof. To the extent that a Protected Document has been loaded into a litigation
19 review database under the control of the Receiving Party, the Receiving Party
20 shall have all electronic copies of the Protected Document extracted from the
21 database. Where such Protected Documents cannot be destroyed or separated,
22 they shall not be reviewed, disclosed, or otherwise used by the Receiving
23 Party. Notwithstanding, the Receiving Party is under no obligation to search or
24 review the Producing Party's documents to identify potentially privileged or work
25 product Protected Documents.

26 (ii) If the Producing Party intends to assert a claim of privilege or
27 other protection over documents identified by the Receiving Party as Protected
28 Documents, the Producing Party will, within ten (10) days of receiving the

1 Receiving Party's written notification described above, inform the Receiving Party
2 of such intention in writing and shall provide the Receiving Party with a log for
3 such Protected Documents that is consistent with the requirements of the Federal
4 Rules of Civil Procedure, setting forth the basis for the claim of privilege or other
5 protection. In the event that any portion of a Protected Document does not contain
6 privileged or protected information, the Producing Party shall also provide to the
7 Receiving Party a redacted copy of the document that omits the information that
8 the Producing Party believes is subject to a claim of privilege or other protection.

9 (d) If, during the course of this litigation, a party determines it has
10 produced a Protected Document:

11 (i) the Producing Party may notify the Receiving Party of such
12 inadvertent production in writing, and demand the return of such
13 documents. Such notice shall be in writing, however, it may be delivered orally
14 on the record at a deposition, promptly followed up in writing. The Producing
15 Party's written notice will identify the Protected Document inadvertently
16 produced by bates number range or hash value, the privilege or protection
17 claimed, and the basis for the assertion of the privilege and shall provide the
18 Receiving Party with a log for such Protected Documents that is consistent with
19 the requirements of the Federal Rules of Civil Procedure, setting forth the basis for
20 the claim of privilege or other protection. In the event that any portion of the
21 Protected Document does not contain privileged or protected information, the
22 Producing Party shall also provide to the Receiving Party a redacted copy of the
23 Document that omits the information that the Producing Party believes is subject
24 to a claim of privilege or other protection.

25 (ii) the Receiving Party must, within ten (10) days of receiving the
26 Producing Party's written notification described above, return, sequester, or
27 destroy the Protected Document and any copies, along with any notes, abstracts or
28 compilations of the content thereof. To the extent that a Protected Document has

1 been loaded into a litigation review database under the control of the Receiving
2 Party, the Receiving Party shall have all electronic copies of the Protected
3 Document extracted from the database.

4 (e) To the extent that the information contained in a Protected Document
5 has already been used in or described in other documents generated or maintained
6 by the Receiving Party prior to the date of receipt of written notice by the
7 Producing Party as set forth in paragraphs 11(c)(ii) and 11(d)(i), then the
8 Receiving Party shall sequester such documents until the claim has been
9 resolved. If the Receiving Party disclosed the Protected Document before being
10 notified of its inadvertent production, it must take reasonable steps to retrieve it.

11 (f) The Receiving Party's return, sequestering or destruction of Protected
12 Documents as provided herein will not act as a waiver of the Requesting Party's
13 right to move for the production of the returned, sequestered or destroyed
14 documents on the grounds that the documents are not, in fact, subject to a viable
15 claim of privilege or protection. However, the Receiving Party is prohibited and
16 estopped from arguing that:

17 (i) the disclosure or production of the Protected Documents acts
18 as a waiver of an applicable privilege or evidentiary protection;

19 (ii) the disclosure of the Protected Documents was not inadvertent;

20 (iii) the Producing Party did not take reasonable steps to prevent the
21 disclosure of the Protected Documents; or

22 (iv) the Producing Party failed to take reasonable or timely steps to
23 rectify the error.

24 (g) Either party may submit Protected Documents to the Court under seal
25 for a determination of the claim of privilege or other protection. The Producing
26 Party shall preserve the Protected Documents until such claim is resolved. The
27 Receiving Party may not use the Protected Documents for any purpose absent this
28 Court's Order.

1 (h) Upon a determination by the Court that the Protected Documents are
2 protected by the applicable privilege or evidentiary protection, and if the Protected
3 Documents have been sequestered rather than returned or destroyed by the
4 Receiving Party, the Protected Documents shall be returned or destroyed within 10
5 (ten) days of the Court's order. The Court may also order the identification by the
6 Receiving Party of Protected Documents by search terms or other means.

7 (i) Nothing contained herein is intended to, or shall serve to limit a
8 party's right to conduct a review of documents, data (including electronically
9 stored information) and other information, including without limitation, metadata,
10 for relevance, responsiveness or the segregation of privileged or protected
11 information before such information is produced to another party.

12 (j) By operation of the parties' agreement and Court Order, the parties
13 are specifically afforded the protections of FRE 502 (d) and (e).

14 11. MISCELLANEOUS

15 11.1 Right to Further Relief. Nothing in this Order abridges the right of any
16 person to seek its modification by the Court in the future.

17 11.2 Right to Assert Other Objections. By stipulating to the entry of this
18 Protective Order, no Party waives any right it otherwise would have to object to
19 disclosing or producing any information or item on any ground not addressed in
20 this Stipulated Protective Order. Similarly, no Party waives any right to object on
21 any ground to use in evidence of any of the material covered by this Protective
22 Order.

23 11.3 Filing Protected Material. A Party that seeks to file under seal any
24 Protected Material must comply with Local Civil Rule 79-5. Protected Material
25 may only be filed under seal pursuant to a court order authorizing the sealing of
26 the specific Protected Material at issue. If a Party's request to file Protected
27 Material under seal is denied by the court, then the Receiving Party may file the
28 information in the public record unless otherwise instructed by the court.

1 12.FINAL DISPOSITION

2 After the final disposition of this Action, as defined in paragraph 4, within
3 60 days of a written request by the Designating Party, each Receiving Party must
4 return all Protected Material to the Producing Party or destroy such material. As
5 used in this subdivision, "all Protected Material" includes all copies, abstracts,
6 compilations, summaries, and any other format reproducing or capturing any of
7 the Protected Material. Whether the Protected Material is returned or destroyed,
8 the Receiving Party must submit a written certification to the Producing Party
9 (and, if not the same person or entity, to the Designating Party) by the 60 day
10 deadline that (1) identifies (by category, where appropriate) all the Protected
11 Material that was returned or destroyed and (2) affirms that the Receiving Party
12 has not retained any copies, abstracts, compilations, summaries or any other
13 format reproducing or capturing any of the Protected Material. Notwithstanding
14 this provision, Counsel are entitled to retain an archival copy of all pleadings,
15 motion papers, trial, deposition, and hearing transcripts, legal memoranda,
16 correspondence, deposition and trial exhibits, expert reports, attorney work
17 product, and consultant and expert work product, even if such materials contain
18 Protected Material. Any such archival copies that contain or constitute Protected
19 Material remain subject to this Protective Order as set forth in Section 4
20 (DURATION).

21 13.VIOLATION

22 Any violation of this Order may be punished by appropriate measures
23 including, without limitation, contempt proceedings and/or monetary sanctions.

24 ///

25 ///

26 ///

27 ///

28 ///

1 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

2
3 Dated: August 24, 2017

Capstone Law APC

4
5 By: 

Matthew T. Theriault
Robert J. Drexler, Jr.
Jonathan Lee
Natalie Torbati

7
8 Attorneys for Plaintiff Kia Davidson

9
10 Dated: August 24, 2017

Higgs Fletcher & Mack LLP

11
12 By: 

James M. Peterson
Jason C. Ross
Kyle W. Nageotte

14 Attorneys for Defendant O'Reilly Auto
Enterprises, LLC

15
16 Dated: _____

17 _____
Hon. R. Gary Klausner
District Court Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Central District of California
in the case of *Davidson v. O'Reilly Auto Enterprises, LLC*, Case No. 5:17-cv-
00603-RGK-AJW. I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item
that is subject to this Stipulated Protective Order to any person or entity except in
strict compliance with the provisions of this Order. I further agree to submit to the
jurisdiction of the United States District Court for the Central District of
California for enforcing the terms of this Stipulated Protective Order, even if such
enforcement proceedings occur after termination of this action. I hereby appoint
_____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection
with this action or any proceedings related to enforcement of this Stipulated
Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

1 Matthew T. Theriault (SBN 244037)
Matthew.Theriault@CapstoneLawyers.com
2 Robert J. Drexler, Jr. (SBN 119119)
Robert.Drexler@CapstoneLawyers.com
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Jonathan.Lee@CapstoneLawyers.com
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6 Los Angeles, California 90067
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7 Facsimile: (310) 943-0396

8
9 Attorneys for Plaintiff Kia Davidson

10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12

13 KIA DAVIDSON, individually, and
14 on behalf of other members of the
general public similarly situated,

15 Plaintiff,

16 vs.

17 O'REILLY AUTO ENTERPRISES,
18 LLC, a Delaware corporation,;

19 Defendant.
20
21
22
23
24
25
26
27
28

Case No.: 5:17-cv-00603

**STIPULATED PROTECTIVE
ORDER**

1 A. PURPOSES AND LIMITATIONS

2 Disclosure and discovery in this action is likely to involve production of
3 confidential, proprietary or private information for which special protection from
4 public disclosure and from use for any purpose other than prosecuting this
5 litigation may be warranted. Accordingly, the parties to this case, KIA
6 DAVIDSON and O'REILLY AUTO ENTERPRISES, LLC (the "Parties"),
7 hereby stipulate to and petition the Court to enter the following Stipulated
8 Protective Order. The parties acknowledge that this Order does not confer blanket
9 protections on all disclosures, documents, or responses to discovery and that the
10 protection it affords from public disclosure and use extends only to the limited
11 information or items that are entitled to confidential treatment under the applicable
12 legal principles.

13 B. GOOD CAUSE STATEMENT

14 This action is likely to involve trade secrets and other valuable research,
15 development, commercial, financial, technical and/or proprietary information for
16 which special protection from public disclosure and from use for any purpose
17 other than prosecution of this action is warranted. Such confidential and
18 proprietary materials and information consist of, among other things, confidential
19 business or financial information, information regarding confidential business
20 practices, or other confidential research, development, or commercial information
21 (including information implicating privacy rights of third parties), information
22 otherwise generally unavailable to the public, or which may be privileged or
23 otherwise protected from disclosure under state or federal statutes, court rules,
24 case decisions, or common law. Accordingly, to expedite the flow of information,
25 to facilitate the prompt resolution of disputes over confidentiality of discovery
26 materials, to adequately protect information the parties are entitled to keep
27 confidential, to ensure that the parties are permitted reasonable necessary uses of
28 such material in preparation for and in the conduct of trial, to address their

1 handling at the end of the litigation, and serve the ends of justice, a protective
2 order for such information is justified in this matter. It is the intent of the parties
3 that information will not be designated as confidential for tactical reasons and that
4 nothing be so designated without a good faith belief that it has been maintained in
5 a confidential, non-public manner, and there is good cause why it should not be
6 part of the public record of this case.

7 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER
8 SEAL

9 The parties further acknowledge, as set forth in Section 12.3, below, that
10 this Stipulated Protective Order does not entitle them to file confidential
11 information under seal; Local Civil Rule 79-5 sets forth the procedures that must
12 be followed and the standards that will be applied when a party seeks permission
13 from the court to file material under seal.

14 There is a strong presumption that the public has a right of access to judicial
15 proceedings and records in civil cases. In connection with non-dispositive
16 motions, good cause must be shown to support a filing under seal. *See Kamakana*
17 *v. City and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v.*
18 *Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v.*
19 *Sony Electronics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated
20 protective orders require good cause showing), and a specific showing of good
21 cause or compelling reasons with proper evidentiary support and legal
22 justification, must be made with respect to Protected Material that a party seeks to
23 file under seal. The parties' mere designation of Disclosure or Discovery Material
24 as "CONFIDENTIAL" does not— without the submission of competent evidence
25 by declaration, establishing that the material sought to be filed under seal qualifies
26 as confidential, privileged, or otherwise protectable—constitute good cause.
27 Further, if a party requests sealing related to a dispositive motion or trial, then
28 compelling reasons, not only good cause, for the sealing must be shown, and the

1 relief sought shall be narrowly tailored to serve the specific interest to be
2 protected. *See Pintos v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir.
3 2010). For each item or type of information, document, or thing sought to be filed
4 or introduced under seal in connection with a dispositive motion or trial, the party
5 seeking protection must articulate compelling reasons, supported by specific facts
6 and legal justification, for the requested sealing order. Again, competent evidence
7 supporting the application to file documents under seal must be provided by
8 declaration.

9 Any document that is not confidential, privileged, or otherwise protectable
10 in its entirety will not be filed under seal if the confidential portions can be
11 redacted. If documents can be redacted, then a redacted version for public
12 viewing, omitting only the confidential, privileged, or otherwise protectable
13 portions of the document, shall be filed. Any application that seeks to file
14 documents under seal in their entirety should include an explanation of why
15 redaction is not feasible.

16 1. DEFINITIONS

17 1.1 Action: *Davidson v. O'Reilly Auto Enterprises, LLC*, United States
18 District Court for the Central District of California Case No. 5:17-cv-00603-RGK-
19 AJW

20 1.2 Challenging Party: a Party or Non-Party that challenges the designation
21 of information or items under this Order.

22 1.3 "CONFIDENTIAL" Information or Items: information (regardless of
23 how it is generated, stored or maintained) or tangible things that qualify for
24 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
25 the Good Cause Statement.

26 Such information shall include, but not necessarily be limited to:

27 (a) Any and all documents referring or related to confidential and
28 proprietary human resources or business information; financial records of the

1 parties; compensation of Defendant's current or former personnel; policies,
2 procedures or training materials of Defendant; or Defendant's organizational
3 structure;

4 (b) Any documents from the personnel, medical or workers'
5 compensation file of any current or former employee or contractor;

6 (c) Any documents relating to the medical or health information of
7 any of Defendant's current or former employees or contractors;

8 (d) Any portions of depositions (audio or video) where Confidential
9 Information is disclosed or used as exhibits.

10 1.4 Counsel: Counsel for Plaintiff, Outside Counsel of Record for
11 Defendant, and In-House Counsel for Defendant (as well as their support staff).

12 1.5 Designating Party: a Party or Non-Party that designates information or items
13 that it produces in disclosures or in responses to discovery as
14 "CONFIDENTIAL".

15 1.6 Disclosure or Discovery Material: all items or information, regardless of
16 the medium or manner in which it is generated, stored, or maintained (including,
17 among other things, testimony, transcripts, and tangible things), that are produced
18 or generated in disclosures or responses to discovery in this matter.

19 1.7 Expert: a person with specialized knowledge or experience in a matter
20 pertinent to the litigation who has been retained by a Party or its counsel to serve
21 as an expert witness or as a consultant in this Action.

22 1.8 In-House Counsel: attorneys who are employees of a party to this
23 Action. In-House Counsel does not include Outside Counsel of Record or any
24 other outside counsel.

25 1.9 Non-Party: any natural person, partnership, corporation, association or
26 other legal entity not named as a Party to this action.

27 1.10 Outside Counsel of Record: attorneys who are not employees of a
28 party to this Action but are retained to represent or advise a party to this Action

1 and have appeared in this Action on behalf of that party or are affiliated with a law
2 firm that has appeared on behalf of that party, and includes support staff.

3 1.11 Party: any party to this Action, including all of its officers, directors,
4 employees, consultants, retained experts, and Outside Counsel of Record (and
5 their support staffs).

6 1.12 Producing Party: a Party or Non-Party that produces Disclosure or
7 Discovery Material in this Action.

8 1.13 Professional Vendors: persons or entities that provide litigation support
9 services (e.g., photocopying, videotaping, translating, preparing exhibits or
10 demonstrations, and organizing, storing, or retrieving data in any form or medium)
11 and their employees and subcontractors.

12 1.14 Protected Material: any Disclosure or Discovery Material that is
13 designated as "CONFIDENTIAL".

14 1.15 Receiving Party: a Party that receives Disclosure or Discovery
15 Material from a Producing Party.

16 2. SCOPE

17 The protections conferred by this Stipulation and Order cover not only
18 Protected Material (as defined above), but also (1) any information copied or
19 extracted from Protected Material; (2) all copies, excerpts, summaries, or
20 compilations of Protected Material; and (3) any testimony, conversations, or
21 presentations by Parties or their Counsel that might reveal Protected Material.
22 Any use of Protected Material at trial shall be governed by the orders of the trial
23 judge. This Order does not govern the use of Protected Material at trial.

24 3. DURATION

25 Even after final disposition of this litigation, the confidentiality obligations
26 imposed by this Order shall remain in effect until a Designating Party agrees
27 otherwise in writing or a court order otherwise directs. Final disposition shall be
28 deemed to be the later of (1) dismissal of all claims and defenses in this action,

1 with or without prejudice; or (2) final judgment herein after the completion and
2 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
3 including the time limits for filing any motions or applications for extension of
4 time pursuant to applicable law.

5 4. DESIGNATING PROTECTED MATERIAL

6 4.1 Exercise of Restraint and Care in Designating Material for Protection.

7 Each Party or Non-Party that designates information or items for protection under
8 this Order must take care to limit any such designation to specific material that
9 qualifies under the appropriate standards. The Designating Party must designate
10 for protection only those parts of material, documents, items or oral or written
11 communications that qualify so that other portions of the material, documents,
12 items or communications for which protection is not warranted are not swept
13 unjustifiably within the ambit of this Order.

14 Mass, indiscriminate or routinized designations are prohibited. Designations
15 that are shown to be clearly unjustified or that have been made for an improper
16 purpose (e.g., to unnecessarily encumber the case development process or to
17 impose unnecessary expenses and burdens on other parties) may expose the
18 Designating Party to sanctions.

19 If it comes to a Designating Party's attention that information or items that
20 it designated for protection do not qualify for protection, that Designating Party
21 must promptly notify all other Parties that it is withdrawing the inapplicable
22 designation.

23 4.2 Manner and Timing of Designations. Except as otherwise provided in
24 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
25 stipulated or ordered, Disclosure or Discovery Material that qualifies for
26 protection under this Order must be clearly so designated before the material is
27 disclosed or produced. Designation in conformity with this Order requires:
28

1 (a) for information in documentary form (e.g., paper or electronic
2 documents, but excluding transcripts of depositions or other pretrial or trial
3 proceedings), that the Producing Party affix at a minimum, the legend
4 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
5 contains protected material. If only a portion of the material on a page qualifies for
6 protection, the Producing Party also must clearly identify the protected portion(s)
7 (e.g., by making appropriate markings in the margins).

8 A Party or Non-Party that makes original documents available for
9 inspection need not designate them for protection until after the inspecting Party
10 has indicated which documents it would like copied and produced. During the
11 inspection and before the designation, all of the material made available for
12 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
13 identified the documents it wants copied and produced, the Producing Party must
14 determine which documents, or portions thereof, it believes qualify for protection
15 under this Order. Then, before producing the specified documents, the Producing
16 Party must affix the "CONFIDENTIAL" legend to each page that contains
17 Protected Material. If only a portion of the material on a page qualifies for
18 protection, the Producing Party also must clearly identify the protected portion(s)
19 (e.g., by making appropriate markings in the margins).

20 (b) for testimony given in depositions that the Designating Party identifies
21 the Disclosure or Discovery Material on the record, before the close of the
22 deposition all protected testimony.

23 (c) for information produced in some form other than documentary and for
24 any other tangible items, that the Producing Party affix in a prominent place on the
25 exterior of the container or containers in which the information is stored the
26 legend "CONFIDENTIAL." If only a portion or portions of the information
27 warrants protection, the Producing Party, to the extent practicable, shall identify
28 the protected portion(s).

1 4.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
2 failure to designate qualified information or items does not, standing alone, waive
3 the Designating Party's right to secure protection under this Order for such
4 material. Upon timely correction of a designation, the Receiving Party must make
5 reasonable efforts to assure that the material is treated in accordance with the
6 provisions of this Order.

7 5. CHALLENGING CONFIDENTIALITY DESIGNATIONS

8 5.1 Timing of Challenges. Any Party or Non-Party may challenge a
9 designation of confidentiality at any time that is consistent with the Court's
10 Scheduling Order.

11 5.2 Meet and Confer. The Challenging Party shall initiate the dispute
12 resolution process in full accordance with Local Rule 37-1 by providing written
13 notice of each designation it is challenging and describing the basis for each
14 challenge. To avoid ambiguity as to whether a challenge has been made, the
15 written notice must recite that the challenge to confidentiality is being made in
16 accordance with this specific paragraph of the Protective Order. The parties shall
17 attempt to resolve each challenge in good faith and must begin the process by
18 conferring directly (in voice-to-voice dialogue; other forms of communication are
19 not sufficient) within 14 days of the date of service of notice. In conferring, the
20 Challenging Party must explain the basis for its belief that the designation was not
21 proper and must give the Designating Party an opportunity to review the
22 designated material, to reconsider the circumstances, and, if no change in
23 designation is offered, to explain the basis for the chosen designation. A
24 Challenging Party may proceed to the next stage of the challenge process only if it
25 has engaged in this meet and confer process first or establishes that the
26 Designating Party is unwilling to participate in the meet and confer process in a
27 timely manner.

1 5.3 Joint Stipulation. If the Parties cannot resolve a challenge without court
2 intervention, the Challenging Party shall file and serve a motion to remove
3 confidentiality designation in compliance with Local Rule 37-2 (including the
4 Joint Stipulation Requirement) within 28 days of the initial notice of challenge or
5 within 14 days of the parties agreeing that the meet and confer process will not
6 resolve their dispute, whichever is earlier. Each such motion must be accompanied
7 by a competent declaration affirming that the movant has complied with the meet
8 and confer requirements imposed in the preceding paragraph and Local Rule 37-1.
9 Failure by the Challenging Party to make such a motion including the required
10 declaration within 28 days (or 14 days, if applicable) shall automatically waive the
11 confidentiality objection for each challenged designation. In addition, the
12 Designating Party may file a motion to retain a confidentiality designation at any
13 time if there is good cause for doing so, including a challenge to the designation of
14 a deposition transcript or any portions thereof. Any motion brought pursuant to
15 this provision must be accompanied by a competent declaration affirming that the
16 movant has complied with the meet and confer requirements imposed by the
17 preceding paragraph.

18
19 5.4 The burden of persuasion in any such challenge proceeding shall be on
20 the Designating Party. Frivolous challenges, and those made for an improper
21 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
22 parties) may expose the Challenging Party to sanctions. Unless the Designating
23 Party has waived or withdrawn the confidentiality designation, all parties shall
24 continue to afford the material in question the level of protection to which it is
25 entitled under the Producing Party's designation until the Court rules on the
26 challenge.

27 6. ACCESS TO AND USE OF PROTECTED MATERIAL
28

1 6.1 Basic Principles. A Receiving Party may use Protected Material that is
2 disclosed or produced by another Party or by a Non-Party in connection with this
3 Action only for prosecuting, defending or attempting to settle this Action. This
4 Stipulated Protective Order is expressly intended to comply with Rule 1-500(A) of
5 the California Rules of Professional Conduct. Such Protected Material may be
6 disclosed only to the categories of persons and under the conditions described in
7 this Order. When the Action has been terminated, a Receiving Party must comply
8 with the provisions of section 12 below (FINAL DISPOSITION).

9 Protected Material must be stored and maintained by a Receiving Party at a
10 location and in a secure manner that ensures that access is limited to the persons
11 authorized under this Order.

12 6.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
13 otherwise ordered by the court or permitted in writing by the Designating Party, a
14 Receiving Party may disclose any information or item designated
15 "CONFIDENTIAL" only to:

16 (a) the Receiving Party's Outside Counsel of Record in this Action, as well
17 as employees of said Outside Counsel of Record to whom it is reasonably
18 necessary to disclose the information for this Action;

19 (b) the officers, directors, and employees (including In-House Counsel) of
20 the Receiving Party to whom disclosure is reasonably necessary for this Action;

21 (c) Experts (as defined in this Order) of the Receiving Party to whom
22 disclosure is reasonably necessary for this Action and who have signed the
23 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

24 (d) the court and its personnel;

25 (e) court reporters and their staff;

26 (f) professional jury or trial consultants, mock jurors, and Professional
27 Vendors (as defined in this Order) to whom disclosure is reasonably necessary for
28

1 this Action and who have signed the "Acknowledgment and Agreement to Be
2 Bound" (Exhibit A);

3 (g) the author or recipient of a document containing the information or a
4 custodian or other person who otherwise possessed or knew the information;

5 (h) during their depositions, witnesses, and attorneys for witnesses, in the
6 Action to whom disclosure is reasonably necessary provided: (1) the deposing
7 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)
8 they will not be permitted to keep any confidential information unless they sign
9 the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise
10 agreed by the Designating Party or ordered by the court. Pages of transcribed
11 deposition testimony or exhibits to depositions that reveal Protected Material may
12 be separately bound by the court reporter and may not be disclosed to anyone
13 except as permitted under this Stipulated Protective Order; and

14 (i) any mediator or settlement officer, and their supporting personnel,
15 mutually agreed upon by any of the parties engaged in settlement discussions.

16 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
17 IN OTHER LITIGATION

18 If a Party is served with a subpoena or a court order issued in other
19 litigation that compels disclosure of any information or items designated in this
20 Action as "CONFIDENTIAL," that Party must:

21 (a) promptly notify in writing the Designating Party. Such notification shall
22 include a copy of the subpoena or court order;

23 (b) promptly notify in writing the party who caused the subpoena or order to
24 issue in the other litigation that some or all of the material covered by the
25 subpoena or order is subject to this Protective Order. Such notification shall
26 include a copy of this Stipulated Protective Order; and

27 (c) cooperate with respect to all reasonable procedures sought to be pursued
28 by the Designating Party whose Protected Material may be affected.

1 If the Designating Party timely seeks a protective order, the Party served
2 with the subpoena or court order shall not produce any information designated in
3 this action as "CONFIDENTIAL" before a determination by the court from which
4 the subpoena or order issued, unless the Party has obtained the Designating
5 Party's permission. The Designating Party shall bear the burden and expense of
6 seeking protection in that court of its confidential material and nothing in these
7 provisions should be construed as authorizing or encouraging a Receiving Party in
8 this Action to disobey a lawful directive from another court.

9 8. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
10 PRODUCED IN THIS LITIGATION

11 (a) The terms of this Order are applicable to information produced by a
12 Non-Party in this Action and designated as "CONFIDENTIAL." Such information
13 produced by Non-Parties in connection with this litigation is protected by the
14 remedies and relief provided by this Order. Nothing in these provisions should be
15 construed as prohibiting a Non-Party from seeking additional protections.

16 (b) In the event that a Party is required, by a valid discovery request, to
17 produce a Non-Party's confidential information in its possession, and the Party is
18 subject to an agreement with the Non-Party not to produce the Non-Party's
19 confidential information, then the Party shall:

20 (1) promptly notify in writing the Requesting Party and the Non-Party that
21 some or all of the information requested is subject to a confidentiality agreement
22 with a Non-Party;

23 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
24 Order in this Action, the relevant discovery request(s), and a reasonably specific
25 description of the information requested; and

26 (3) make the information requested available for inspection by the Non-
27 Party, if requested.
28

1 (c) If the Non-Party fails to seek a protective order from this court within 14
2 days of receiving the notice and accompanying information, the Receiving Party
3 may produce the Non-Party's confidential information responsive to the discovery
4 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
5 not produce any information in its possession or control that is subject to the
6 confidentiality agreement with the Non-Party before a determination by the court.

7 Absent a court order to the contrary, the Non-Party shall bear the burden
8 and expense of seeking protection in this court of its Protected Material.

9 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

10 If a Receiving Party learns that, by inadvertence or otherwise, it has
11 disclosed Protected Material to any person or in any circumstance not authorized
12 under this Stipulated Protective Order, the Receiving Party must immediately (a)
13 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
14 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
15 the person or persons to whom unauthorized disclosures were made of all the
16 terms of this Order, and (d) request such person or persons to execute the
17 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
18 A.

19 10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
20 PROTECTED MATERIAL

21 Pursuant to FRE 502 (d) and (e), the parties agree to, and the Court orders
22 protection of privileged and otherwise Protected Material against claims of waiver
23 (including as against third parties and in other federal and state proceedings) as
24 follows:

25 (a) The disclosure or production of documents by a Producing Party
26 subject to a legally recognized claim of privilege, including without limitation the
27 attorney-client privilege and the work-product doctrine, to a Receiving Party, shall
28 in no way constitute the voluntary disclosure of such Document, provided that the

1 requirements of Fed. R. Evid. 502(b)(1)-(3) are met;

2 (b) The inadvertent disclosure or production of any document in this
3 action shall not result in the waiver of any privilege, evidentiary protection or
4 other protection associated with such document as to the Receiving Party or any
5 third parties, and shall not result in any waiver, including subject matter waiver, of
6 any kind, provided that the requirements of Fed. R. Evid. 502(b)(1)-(3) are met;

7 (c) If, during the course of this litigation, a party determines that any
8 document produced by another party is or may reasonably be subject to a legally
9 recognizable privilege or evidentiary protection ("Protected Document"):

10 (i) the Receiving Party shall: (A) refrain from reading the
11 Protected Document any more closely than is necessary to ascertain that it is
12 privileged or otherwise protected from disclosure; (B) immediately notify the
13 Producing Party in writing that it has discovered documents believed to be
14 privileged or protected; (C) specifically identify the Protected Documents by bates
15 number range or hash value, and, (D) within ten (10) days of discovery by the
16 Receiving Party, return, sequester, or destroy all copies of such Protected
17 Documents, along with any notes, abstracts or compilations of the content
18 thereof. To the extent that a Protected Document has been loaded into a litigation
19 review database under the control of the Receiving Party, the Receiving Party
20 shall have all electronic copies of the Protected Document extracted from the
21 database. Where such Protected Documents cannot be destroyed or separated,
22 they shall not be reviewed, disclosed, or otherwise used by the Receiving
23 Party. Notwithstanding, the Receiving Party is under no obligation to search or
24 review the Producing Party's documents to identify potentially privileged or work
25 product Protected Documents.

26 (ii) If the Producing Party intends to assert a claim of privilege or
27 other protection over documents identified by the Receiving Party as Protected
28 Documents, the Producing Party will, within ten (10) days of receiving the

1 Receiving Party's written notification described above, inform the Receiving Party
2 of such intention in writing and shall provide the Receiving Party with a log for
3 such Protected Documents that is consistent with the requirements of the Federal
4 Rules of Civil Procedure, setting forth the basis for the claim of privilege or other
5 protection. In the event that any portion of a Protected Document does not contain
6 privileged or protected information, the Producing Party shall also provide to the
7 Receiving Party a redacted copy of the document that omits the information that
8 the Producing Party believes is subject to a claim of privilege or other protection.

9 (d) If, during the course of this litigation, a party determines it has
10 produced a Protected Document:

11 (i) the Producing Party may notify the Receiving Party of such
12 inadvertent production in writing, and demand the return of such
13 documents. Such notice shall be in writing, however, it may be delivered orally
14 on the record at a deposition, promptly followed up in writing. The Producing
15 Party's written notice will identify the Protected Document inadvertently
16 produced by bates number range or hash value, the privilege or protection
17 claimed, and the basis for the assertion of the privilege and shall provide the
18 Receiving Party with a log for such Protected Documents that is consistent with
19 the requirements of the Federal Rules of Civil Procedure, setting forth the basis for
20 the claim of privilege or other protection. In the event that any portion of the
21 Protected Document does not contain privileged or protected information, the
22 Producing Party shall also provide to the Receiving Party a redacted copy of the
23 Document that omits the information that the Producing Party believes is subject
24 to a claim of privilege or other protection.

25 (ii) the Receiving Party must, within ten (10) days of receiving the
26 Producing Party's written notification described above, return, sequester, or
27 destroy the Protected Document and any copies, along with any notes, abstracts or
28 compilations of the content thereof. To the extent that a Protected Document has

1 been loaded into a litigation review database under the control of the Receiving
2 Party, the Receiving Party shall have all electronic copies of the Protected
3 Document extracted from the database.

4 (e) To the extent that the information contained in a Protected Document
5 has already been used in or described in other documents generated or maintained
6 by the Receiving Party prior to the date of receipt of written notice by the
7 Producing Party as set forth in paragraphs 11(c)(ii) and 11(d)(i), then the
8 Receiving Party shall sequester such documents until the claim has been
9 resolved. If the Receiving Party disclosed the Protected Document before being
10 notified of its inadvertent production, it must take reasonable steps to retrieve it.

11 (f) The Receiving Party's return, sequestering or destruction of Protected
12 Documents as provided herein will not act as a waiver of the Requesting Party's
13 right to move for the production of the returned, sequestered or destroyed
14 documents on the grounds that the documents are not, in fact, subject to a viable
15 claim of privilege or protection. However, the Receiving Party is prohibited and
16 estopped from arguing that:

17 (i) the disclosure or production of the Protected Documents acts
18 as a waiver of an applicable privilege or evidentiary protection;

19 (ii) the disclosure of the Protected Documents was not inadvertent;

20 (iii) the Producing Party did not take reasonable steps to prevent the
21 disclosure of the Protected Documents; or

22 (iv) the Producing Party failed to take reasonable or timely steps to
23 rectify the error.

24 (g) Either party may submit Protected Documents to the Court under seal
25 for a determination of the claim of privilege or other protection. The Producing
26 Party shall preserve the Protected Documents until such claim is resolved. The
27 Receiving Party may not use the Protected Documents for any purpose absent this
28 Court's Order.

1 (h) Upon a determination by the Court that the Protected Documents are
2 protected by the applicable privilege or evidentiary protection, and if the Protected
3 Documents have been sequestered rather than returned or destroyed by the
4 Receiving Party, the Protected Documents shall be returned or destroyed within 10
5 (ten) days of the Court's order. The Court may also order the identification by the
6 Receiving Party of Protected Documents by search terms or other means.

7 (i) Nothing contained herein is intended to, or shall serve to limit a
8 party's right to conduct a review of documents, data (including electronically
9 stored information) and other information, including without limitation, metadata,
10 for relevance, responsiveness or the segregation of privileged or protected
11 information before such information is produced to another party.

12 (j) By operation of the parties' agreement and Court Order, the parties
13 are specifically afforded the protections of FRE 502 (d) and (e).

14 11. MISCELLANEOUS

15 11.1 Right to Further Relief. Nothing in this Order abridges the right of any
16 person to seek its modification by the Court in the future.

17 11.2 Right to Assert Other Objections. By stipulating to the entry of this
18 Protective Order, no Party waives any right it otherwise would have to object to
19 disclosing or producing any information or item on any ground not addressed in
20 this Stipulated Protective Order. Similarly, no Party waives any right to object on
21 any ground to use in evidence of any of the material covered by this Protective
22 Order.

23 11.3 Filing Protected Material. A Party that seeks to file under seal any
24 Protected Material must comply with Local Civil Rule 79-5. Protected Material
25 may only be filed under seal pursuant to a court order authorizing the sealing of
26 the specific Protected Material at issue. If a Party's request to file Protected
27 Material under seal is denied by the court, then the Receiving Party may file the
28 information in the public record unless otherwise instructed by the court.

1 12.FINAL DISPOSITION

2 After the final disposition of this Action, as defined in paragraph 4, within
3 60 days of a written request by the Designating Party, each Receiving Party must
4 return all Protected Material to the Producing Party or destroy such material. As
5 used in this subdivision, "all Protected Material" includes all copies, abstracts,
6 compilations, summaries, and any other format reproducing or capturing any of
7 the Protected Material. Whether the Protected Material is returned or destroyed,
8 the Receiving Party must submit a written certification to the Producing Party
9 (and, if not the same person or entity, to the Designating Party) by the 60 day
10 deadline that (1) identifies (by category, where appropriate) all the Protected
11 Material that was returned or destroyed and (2) affirms that the Receiving Party
12 has not retained any copies, abstracts, compilations, summaries or any other
13 format reproducing or capturing any of the Protected Material. Notwithstanding
14 this provision, Counsel are entitled to retain an archival copy of all pleadings,
15 motion papers, trial, deposition, and hearing transcripts, legal memoranda,
16 correspondence, deposition and trial exhibits, expert reports, attorney work
17 product, and consultant and expert work product, even if such materials contain
18 Protected Material. Any such archival copies that contain or constitute Protected
19 Material remain subject to this Protective Order as set forth in Section 4
20 (DURATION).

21 13.VIOLATION

22 Any violation of this Order may be punished by appropriate measures
23 including, without limitation, contempt proceedings and/or monetary sanctions.

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1 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

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3 Dated: August 24, 2017

Capstone Law APC

4
5 By: 

Matthew T. Theriault
Robert J. Drexler, Jr.
Jonathan Lee
Natalie Torbati

Attorneys for Plaintiff Kia Davidson

6
7
8
9
10 Dated: August 24, 2017

Higgs Fletcher & Mack LLP

11 By: 

James M. Peterson
Jason C. Ross
Kyle W. Nageotte

Attorneys for Defendant O'Reilly Auto
Enterprises, LLC

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13
14
15
16 Dated: 9.5.2017

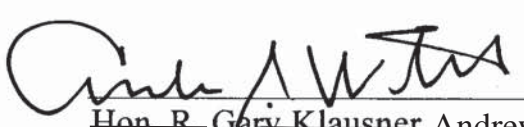

Hon. R. Gary Klausner Andrew J. Wistrich
Magistrate District Court Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Central District of California
in the case of *Davidson v. O'Reilly Auto Enterprises, LLC*, Case No. 5:17-cv-
00603-RGK-AJW. I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item
that is subject to this Stipulated Protective Order to any person or entity except in
strict compliance with the provisions of this Order. I further agree to submit to the
jurisdiction of the United States District Court for the Central District of
California for enforcing the terms of this Stipulated Protective Order, even if such
enforcement proceedings occur after termination of this action. I hereby appoint
_____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection
with this action or any proceedings related to enforcement of this Stipulated
Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____